(25,206)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 133.

C. F. McGINIS AND E. E. YOUNG, PLAINTIFFS IN ERROR,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA.

IN ERROR TO THE SUPERIOR COURT OF IMPERIAL COUNTY, STATE OF CALIFORNIA.

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1 In the Justice's Court of the Township of Calexico, County of Imperial, State of California.

#195.

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

C. F. McGINIS and E. E. YOUNG, Defendants.

Transcript of the Case on Appeal from the Order Denying Motion for New Trial and on Appeal from the Judgment.

Be It Remembered, that the above entitled action came on regularly for trial, upon the plea of not guilty heretofore entered on the 23rd day of April, 1915, by each defendant, before the above entitled Court, Hon. J. B. Hoffman, Justice of said Court presiding, on the 14th day of May, 1915, at the hour of one o'clock in afternoon of said day, and E. E. Leighton, Esq., Special Prosecutor, and E. R. Simon, Esq., Assistant District Attorney, appearing for the plaintiff above named, and the defendants, C. F. McGinis and E. E. Young, being personally present in Court, and C. L. Brown, Esq., appearing as attorney for said defendants; that thereupon C. L. Brown, Esq., as said attorney moved for a continuance of the trial of said cause, said motion being supported by the affidavits of said C. L. Brown, Esq., and E. E. Young, one of the defendants above named, which said affidavits are hereinafter set out, defendants in open Court stating that Leslie Reed had been discharged as one of the attorneys for the defendants at 12 o' lock noon of said 14th day of May, 1914, and thereafter, and after arguments by said attorneys, said Court denied said motion and ordered said trial to proceed in accordance with stipulation between Counsel as set out on reverse side of this page.

NOTE.—Stipulation on Back of Page.

On April 23, 1915, the following stipulation was entered into by and between Messrs. Conkling and Brown representing the 2 defendants, E. E. Young and C. F. McGinis, and the Attorneys representing the people as follows:

It being then and there stipulated and agreed between Counsel on both sides that the defendants be tried on this complaint case No. 194 commencing May 13th, 1915, at 9 o'clock in the forenoon and that as soon as said trial was completed said defendants should next be tried on complaint No. 195 and after said trial has been completed on said action No. 195 that action No. 196 in which the People and the same defendants are parties should be commenced and carried to

completion and that counsel on either side should make no engagements to conflict therewith and that no excuse be considered by the Court as grounds for a continuance except illness of the defendants or their counsel.

J. B. HOFFMAN, J. P.

That thereupon, said C. L. Brown, Esq., withdrew from said trial and said defendants proceeded to trial without an attorney; and thereupon the jury box was filled from the venire, and thereupon and before the jurors were examined upon their general qualifications, said defendants stated to said Court that they had retained William See, Jr., Esq., and Leslie Reed, Esq., as attorneys to represent them upon the trial of said cause; that thereafter jury was duly impaneled and sworn; and oral and documentary evidence having been submitted to said jury on said day and on the 15th day of May, 1915, and upon the completion of the taking of testimony, the attorneys appearing for both plaintiff and defendants having argued the case, and having submitted the case, and the Court having instructed the jury and having submitted the case to said jury for their consideration and deliberation, said jury on the 16th day of May, 1915, returned a verdict of "Guilty" against said defendants, which said verdict is hereinafter set out.

That on the trial of the above entitled action after said jury was sworn to try the above entitled action, the following proceedings were had and taken, to-wit:

Mr. Simon: May it please the Court and gentlemen of the jury, I will read to you the complaint on file herein as follows:

In the Justice's Court of Calexico Township, County of Imperial, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiffs,

vs.

E. E. YOUNG and C. F. McGINIS, Defendants.

Complaint—Criminal.

P. C., Secs. 800, 809, 1426.

Personally appeared before me, this 19th day of April, 1915, Roy Jones of Los Angeles, in the County of Los Angeles, State of California, who, first being sworn, complains and says: That E. E. Young and C. F. McGinis of Calexico, California on the 16th day of April, 1915, and before the filing of this Complaint, at Calexico, California, in the said County of Imperial, State of California, did wilfully and unlawfully have in their possession a preparation of opium containing more than two grains of opium to the fluid or avoirdupois ounce, that said E. E. Young and C. F. McGinis did not receive or obtain said opium upon the written order or prescription of a physician,

dentist or veterinary surgeon licensed to practice in the State of California, and that the said E. E. Young and C. F. McGinis were not then and there manufacturers, jobbers or wholesalers to pharmacists, and that said defendants were not then and there retail registered pharmacists or physicians, or assistant registered pharmacists or physicians, dentists or veterinary surgeons licensed to practice in the State of California, as defined in Section 8 of Act entitled, "An Act to regulate the sale and use of poison in the State of California and providing a penalty for the violation thereof," approved March 5, 1907, amended and approved March 19, 1909, amended and approved April 25, 1911, amended and approved June 11, 1913.

All of which is contrary to the statute in such cases made and provided, and against the peace and dignity of the People of the State of California.

Said Complainant therefore prays that a Warrant may be issued for the arrest of the said E. E. Young and C. F. McGinis and that they may be dealt with according to law.

ROY JONES.

Subscribed and sworn to before me, this 16 day of April, 1915.

J. B. HOFFMAN,
Justice of the Peace of said Township.

(Endorsed:) Filed April 16th, 1915, J. B. Hoffman, Justice of the Peace of said Township.

Mr. Jones called as a witness for the People and sworn.

Questions by Mr. Leighton:

Q. What is your full name?
A. Roy Jones.
Q. What is your business?
A. Inspector for the State Board of Pharmacy of California.
Q. How are you paid your salary?
A. By the State.
Q. Do you receive emoluments other than your salary?
A. No.
Q. Where were you on the 16th day of April, 1915?
A. At Calexico.
Q. How long before the 16th day of April were you in Calexico?
A. I came on Monday the 15th. prior to that time I was here several weeks.
Q. On the 16th day of April what did you do?
A. Seized the package of the defendants.
Q. Seized at the Wells Fargo office?
A. Yes.
Q. Who was with you when you seized the package?
A. Mr. Hoag and Mr. McCoy were with me.
Q. Was Mr. Beardsley there?
A. I don't remember.
Q. Did you make inquiries about the package?

A. Yes.
Q. From whom did you make inquiries?
A. Mr. Beardsley and Mr. McCoy.
Q. What information did you get from Mr. Beardsley?
A. That this package from St. Louis has been received and paid for by McGinnis & Young.
Q. Did you seize the package?
A. Yes.
Q. What did it contain when you seized it?
A. Cocaine, Morphine and opium.
Q. How ma-y packages?
A. 184 ozs. of cocaine, 115 ozs. of morphine, and one package of gum opium, weighing about two pounds.
Q. What did you do with it?
A. Placed it in the First National Bank of Calexico.
Q. What for?
A. For safe keeping.
Q. After placing it in the bank did you remove any?
A. Yes.
Q. What did you remove?
A. I removed a package of morphine, one of cocaine, and a sample of opium.
Q. How much opium?
A. I broke off a sample of the opium.
Q. What did you do with it?
A. I took the sample of opium to Dr. Smith to be analized.
Q. Did he keep the sample?
A. No, he took a part of it to analyze.
Q. Where is the sample that you took?
A. I have it in my possession. (Hands Mr. Leighton sealed envelope.)
Q. Who sealed this envelope?
A. Dr. Smith sealed the envelope and wrote his name and the date upon it.

(Mr. Leighton opens envelope and takes out substance.)

Q. What is this substance that I show you?

Mr. Sen: I object to the question unless the witness testifies from his own knowledge and on the further ground that the proper foundation has not been laid to qualify the witness as an expert as to whether a certain substance is opium and what kind of opium it is.
Court: Objection sustained.

Q. Did you arrest the defendants on that day?
A. Yes.
Q. Where did you arrest Mr. Young?
A. In the Wells Fargo Office.
Q. How long after seizing the goods did you arrest Mr. Young?
A. About one half hour.
Q. How did you arrest Mr. McGinnis?

A. Mr. Young sent a messenger for Mr. McGinis.
Q. When Mr. McGinis came did you arrest him?
A. Yes.

Cross-examination.

By Mr. Sea:

Q. Where was the box at the time you arrested him?
A. In the Wells Fargo Office on the floor.
Q. Was the weighing machine near it?
A. I did not notice.
Q. Where is Mr. McCoy's office?
A. Mr. McCoy has a joint office with Mr. Beardsley.
Q. Was Mr. Young there when the box was seized?
A. No.
Q. Did you know where he was?
A. I believe he was over in Mexicali.
Q. How long after you arrested Mr. Young did you arrest Mr. McGinis?
A. About one-half hour, as near as I can remember.
Q. What did you say to Mr. Young about Dr. McGinis?
A. I told him that I wanted to arrest Dr. McGinis.
Q. Were you present when he sent the messenger for Dr. McGinis?
A. Yes.
Q. Who had charge of the box when you seized it?
A. I seized it in the Wells Fargo Office.
Q. Who did you speak to about the box?
A. I spoke to Mr. Beardsley and Mr. McCoy.
Q. What did you say to Mr. McCoy?
A. I told him I was going to seize the box.
Q. Did Mr. McCoy say anything to you?
A. He said there is the box.
Q. Didn't he say to you that you would have to show your authority before he would let you take the box?
A. Not that I remember.
Q. Did you show him your authority to seize the box?
A. I handed him my card and told him what I was there for.
Q. Did Mr. McCoy say anything further to you?
A. He said, I had made out the papers so that the box could be taken over to Mexicali.

Mr. BEARDSLEY called as a witness for the People and sworn.

Questions by Mr. Leighton:

Q. What is your full name?
A. Roy Beardsley.
Q. What is your business?
A. Agent for Wells Fargo & Co. at Calexico.
Q. Were you in your office, on the 18th day of April?
A. Yes.

Q. Do you know Mr. McGinis and Mr. Young?

A. Yes.

Q. On the 16th day of April was there a package for the defendants in your office.

A. Yes, several packages.

8 Q. Was there a package or box from St. Louis, Mo.?

A. Yes, a box from St. Louis, Mo.

Q. How large was the box?

A. About two and one half feet by eighteen inches and about 4 ft. long and weighed seventy-two pounds.

Q. What was the valuation of this box?

A. $960.00 was the valuation.

Q. Did you see Mr. McGinis or Mr. Young on that day?

A. Yes, I saw Mr. McGinis, I believe I saw both.

Q. What happened there?

A. He, I believe McGinnis paid the charges and left the box in the office.

Q. Were the wells Fargo & Co. responsible to McGinis and Young after the charges were paid and the box receipted for?

A. Wells Fargo & Co. is not responsible after the charges are paid, and so far as the express company was concerned McGinnis & Young Could have taken the box away at any time after the box was receipted for.

Q. Have you the shipping receipt?

A. Yes. (Handing Shipping receipt to Mr. Leighton.)

Mr. Sea: We have no objection to the shipping receipt.

Mr. Leighton: I will read it.

"Wells Fargo & Co., Express.

Consignee: McGinnis & Young.
Address: ——,
O. H. No. —. Article Bx. 960.00 Val. Date 4/12, 1915.

Clerk's No.	W. B. No.	Date.	Billing office.	C. O. D.	Weight.	Total Col.	Paid in part.
2	40	4/7	St. Louis	....	72	6.96	....

Name of Shipper, —— ——. Address, ——.
O. H. from Sheet, ——. Why O. H., ——.
Notice of Consignee, ——. Shipper, —— ——. Billing Office, ——.
Claim Dept. ——.
How disposed of ——, —— —, 191–.
By ——. Received the above in good order 4/16, 1915.
Identified by —— ——.
(Signed) McGINIS & YOUNG."

9 (Mr. Leighton hands shipping receipt to jurors for their examination.)

Mr. Leighton: I ask the Court to mark this as People's "Exhibit A."

Court: So marked.

Mr. Leighton: Mr. Sea, have you any objection to this receipt being returned to the witness, as it is a part of his office record?

Mr. Sea: We have no objection.

Q. Did you see the box seized by Mr. Jones?
A. Yes.
Q. Can you state from your own knowledge what the port of destination of the box was?
A. No, the record of the original waybill is the Chicago office.
Q. What was the destination to your best remembrance?
A. Mexicali, Mexico, to McGinis & Young, the consignees.
Q. After the charges were paid, who took charge of the box?
A. Mr. McCoy, a custom broker.
Q. Did the express company turn the box over to McCoy?
A. No, McGinnis and Young did.

Cross-examination.

By Mr. Sea:

Q. Where is Mr. McCoy's office?
A. His office is with mine.
Q. Is *their* a distinction between the offices?
A. There is no distinction, they are in the same room.
Q. Were you present when the box was seized?
A. Yes.
Q. Where was the box?
A. In my office, it had been in the rear room.
Q. Who removed it?
A. I think Mr. McCoy did.
Q. What did he do with the box?
A. Weighed the contents.
Q. Who weighed the contents?
A. Mr. McCoy, and I think Mr. Young helped him.
Q. Where was the weighing machine?
A. In the same room.
Q. Was the box near the weighing machine?
A. Yes sir.
Q. Do you know why Mr. McCoy was weighing the box?
A. Yes. To ascertain the weight of the contents.
Q. Were you present when Mr. Jones came in?
A. Yes.
Q. Who had charge of the box?
A. Mr. McCoy.
Q. Was Mr. McGinis present?
A. No.
Q. Was Mr. Young present?
A. No.

Redirect examination.

By Mr. Leighton:

Q. Has the Wells Fargo & Co. an office in Mexicali?
A. No.
Q. Did they ever have one?
A. No.
Q. How long have you known Mr. Young and Mr. McGinis?
A. About four or five months.
Q. In Calexico during that time?
A. Yes.
Q. Is it impossible for Wells Fargo & Co. to deliver to Mexico?
A. It is impossible to deliver in Mexico.
Q. When goods are received addressed to a consignee in Mexicali, what do you do?
A. Notify them.
Q. Notify them at Calexico?
A. Yes.
Q. When a shipment is received by Wells Fargo addressed to consignees at Mexicali to whom do you deliver it?
11 A. To the consignee at my office at Calexico.

Recross-examination.

By Mr. See:

Q. The purpose of notifying the consignee, w-en shipment is made to Mexicali, is for reason that the Wells Fargo line ends at Calexico, and you make delivery to the consignee at Calexico because Wells Fargo ends at Calexico?
A. Yes.

Dr. SMITH called as a witness for the People and sworn.

Direct examination.

By Mr. Leighton:

Q. What is your full name?
A. William Fawcett Smith.
Q. What is your business?
A. Practicing physician and surgeon.

Mr. See: We admit the qualifications of Dr. Smith.

Q. Did Mr. Jones take you a sample of opium.
A. Yes.
Q. I show you an envelope which is sealed and has your signature signed on or about the 20th day of April, 1915, is that correct?
A. Yes, it was sealed in my presence and that is my signature.
Q. What did you seal in the envelope?

A. I took a portion of the opium to analize and the other portion was sealed in the envelope.

Q. Have you the sample that you analized?

A. Yes, here it is.

Q. Dr. I ask you to state what was the result of your analysis of this substance?

A. I found it to be pure Turkish Gum opium, and that it contained more than two grains of opium to the avo-rdupois ounce.

Mr. Leighton: I ask that this envelope and the two particles of opium be marked as People's exhibit B.

Court: So marked.

Cross-examination.

By Mr. Sea:

Q. Dr. what kind of opium did you say it was?

A. Pure Turkish gum opium.

Q. Is it crude opium?

A. Yes, it is crude gum opium.

Q. What is this gum opium used for?

A. For Medicial purposes.

Mr. McCoy called as a witness for the People and sworn.

By Mr. Leighton:

Q. What is your full name?

A. W. L. McCoy.

Q. What is your business?

A. Customhouse broker.

Q. Where is your office?

A. In the same building with Wells Fargo & Co.

Q. Do you know the defendants McGinis & Young?

A. Yes sir.

Q. Did you have on the 16th day of April, 1915, a package consigned to McGinis and Young?

A. Yes sir, they directed me to take charge of it. The arrangements had been made several days before.

Q. Have you the shipping receipt?

A. Yes sir; it was in an envelope tacked on the box. (Hands shipping receipt to Mr. Leighton.)

Mr. Leighton: I will ask that this be marked People's Exhibit C, and will read this as follows:

"Invoice of Goods for Export to Mexico, Shipped on Consignment Without Sale by Exporter.

Place and Date: St. Louis, Mo., 1915. Invoice of J. S. Merrill. Consigned by ——— ———. Do. of St. Louis; to McGinnis & Young of Mexicali, Mex. to be shipped per Wells Fargo & Co. Express.

Marks and No. or package	Quantities and description of goods	Fair market value as sold for home consumption—amount
1 Box	100 ozs. morphine sulphate	350.00
	100 ozs. cocaine muriate	300.00
	2 # Gum opium	20.00
	½ oz. morphine sulphate sample	
		960.00

(Signature of owner or agent:)

J. S. MERRILL DRUG CO.
Per REED, *S. C.*"

Court: Exhibit as marked.

Q. Were you present when Mr. Jones seized the box?
A. Yes sir.
Q. What conversation did you have with Mr. Jones concerning the box?
A. Mr. Jones handed me his card and asked me if I had a package consigned to McGinnis and Young, and I stated to him that I had.
Q. Who had control of the box at the time of the seizure?
A. I suppose I had control of it. I was making arrangements to take it across to Mexicali, Mexico, to McGinnis & Young, the consignees. I was acting as their agent, for them.

Cross-examination.

By Mr. Sut:

Q. Do you know who removed the box from the rear room?
A. Yes, I did.
Q. What did you then do with the box?
A. I opened the box and weighed the contents, and Mr. Young helped me.
Q. What was the purpose of your weighing the contents?
A. Under the Mexican law as to certain kinds of goods the exact weight must be shown on the Mexican papers.

14 Q. Where was the weighing machine?
A. In the front office.
Q. Was the weighing machine in its accustomed place?
A. Yes.
Q. Where was the box at the time you were weighing the contents?
A. Next to the weighing machine.
Q. Did you bring the box up to the weighing machine so you could weigh the contents?
A. Yes sir.

Q. What papers had you made out?

A. Both the American and Mexican papers for the exportation of this box to McGinis and Young, the consignees, at Mexicali, Mexico.

Q. Did you hold yourself out to the public as a common carrier?

A. Yes.

Q. Did McGinnis and Young have dominion and control over the box while you had charge of it?

A. Yes sir, they could have taken it away from my office with its contents and done anything they pleased with them.

Mr. Simon: The People rest.

Mr. McGinn called as a witness for the Defendants and sworn.

Mr. Sea:

Q. What is your full name?

A. C. F. McGinis.

Q. Are you one of the defendants charged on the complaint on file?

A. Yes sir.

Q. Do you know the defendant E. E. Young?

A. Yes sir.

Q. What is your business?

A. Physician and surgeon.

Q. Where is your office?

A. Mexicali, Mexico.

Q. Are you practicing in Mexicali?

A. I am an assistant to a Doctor.

Q. Where were you on the 16th day of April prior to the seizure of the box by Jones?

A. In Mexicali, Mexico.

Q. Were you arrested by Jones on the 16th day of April?

A. Yes sir.

Q. Where were you arrested?

A. In Mr. McCoy's office here in Calexico.

Q. How did you happen to call there?

A. Mr. Young sent for me to come over.

Q. Did McGinnis and Young order a shipment of cocaine, morphine and opium from J. S. Merrill & Co. of St. Louis, Mo.?

A. Yes sir.

Q. The goods mentioned in the shipping receipt marked "People's Exhibit C."

A. Yes sir.

Q. Did you have possession of the opium, cocaine and morphine contained in the box that was seized on the 16th day April?

A. Yes.

Q. Did McGinis and Young have authority to export the opium, cocaine and morphine mentioned?

A. Yes. We had authority to export 250 ozs. of morphine, 250 ozs. of cocaine and three pounds of opium.

Q. From whom did you obtain this authority?

Mr. Leighton: Objected to as incompetent, irrelevant, and immaterial, and on the ground that it makes no difference in this case whether they had authority or not.

Mr. Sax: We claim to have had authority under the laws and regulations of the United States.

Mr. Simon: Before we proceed any further I want you to show us the laws and regulations under which you claim authority.

Mr. Sax: We will withdraw this witness and place Mr. McCumber on the stand.

Mr. McCumber called as a witness for the Defendants and sworn.

Mr. Sax:

Q. What is your full name?
A. C. C. McCumber.
Q. What is your official position?
A. Chief Deputy Inspector of United States Customs at the Port of Calexico.
Q. Do you know the defendants, McGinis and Young?
A. Yes Sir.
Q. How long have you known them?
A. I have known Mr. McGinis about a year and Mr. Young four or five months.
Q. Did McGinis and Young have authority to export a quantity of opium.
A. The Western Wholesale Drug Co. of Los Angeles, Cal., had obtained permission to export three pounds of opium, to Mexicali, Mex. And if a shipment came from the Western Wholesale Drug Co. of Los Angeles I would have permitted it to pass through, but if it came from any other place I would have detained it until permission had been received to export it.
Q. Did McGinis and Young have permission to export the two pounds of opium from St. Louis, Mo.
A. No.

NOTE.—Skip bearing the following, passed to page of record at this place:

That a customs broker was a person who made out manifests and paid the duties for other people and for people generally, but that anybody could act for himself in the matter of making out manifests and arranging to do the work of exporting—a customs broker was simply agent of the owner.

Q. Do you know whether McGinis and Young had permission to export to Mexicali two pounds from St. Louis, Mo.
A. To the best of my knowledge they never had any authority from the U. S. Treasury Department to export the opium in question through the port of Calexico to Mexicali.

Dr. C. F. McGinnis recalled.

Cross-examination.

By Mr. Leighton:

Q. Are you a physician and surgeon in the State of California?
A. No, sir.
Q. Are you licensed to practice in the State of California?
A. No sir.
Q. Do you style yourself as Doctor?
A. Yes sir.
Q. And you are not licensed to practice in the State of California?

Mr. Sea: I object to the question as not proper cross examination and for the further reason that he is not a physician and surgeon having graduated as such from some University, and still not be licensed to practice in the State of California.
Court: Objection sustained.

Redirect examination.

By Mr. Shea:

Q. Are you a graduate physician and surgeon of some University?

Mr. Leighton: I object to the question on the ground that it is not a proper question on redirect examination.
Mr. Sea: You have raised the question on cross examination whether or not the witness is a Doctor, and I purpose to show by the witness that he is a graduate as such of a University.
Court: Objection sustained.

Mr. Young called as a witness on behalf of the Defendants and sworn.

Mr. Sea:

Q. What is your full name?
A. E. E. Young.
Q. Do you know C. F. McGinis?
A. Yes sir.
Q. Were you in the office of Wells Fargo and Co. on the 10th day of April, 1915.
A. Yes Sir.
Q. How did you happen to go there?
A. I went to pay the Wells Fargo charges on a consignment of goods from St. Louis, Mo., to McGinis and Young at Morinoli, Mexico.
Q. Who did you pay the charges to?
A. To Mr. Beardsley.
Q. Did you remove the box?
A. No sir.
Q. Did you have possession of the box on the 10th day of April, 1915?

G. V. 20 cross ex. vs.

A. No, Sir.

Q. Do you know what was done with the box?

A. Arrangements were made with Mr. McCoy to have the box taken to Mariculi, Mexico.

Q. Do you know what Mr. McCoy did with the box?

A. He weighed the contents.

Q. Do you know why he weighed the contents?

Mr. Leighton: Objected to on the ground that it is immaterial and makes no difference to this case what the purpose of weighing the contents was.

Mr. Sur: We want to show that Mr. McCoy was to make out the Americans and Mexicans to export the box to McGinis and Young, Mariculi, Mexico.

Court: Objection sustained.

Q. Did McGinis and Young have authority to export the [illegible] pounds of opium that was seized?

Mr. Leighton: Same objection as before. It was here as a fact that [illegible] a question of possession.

Court: Objection sustained.

Mr. Sur: Your Honor will not permit us to put in these facts as to having permission and authority to export the opium under the Regulations of the Treasury Department of course, then the question will rest.

Court: You cannot go into that.

Mr. Sur: We [illegible]

We recommend One Hundred Dollars cash as Fine and no Gail sentence.

20 Court files verdict, and after defendants' attorneys gave notice of motion for a new trial on all statutory grounds, the Court continued the case to May 17, 1915, 5 P. M.

That thereupon the attorneys for said defendants made a motion for a new trial based upon the notice of motion for a new trial filed herein, which said notice of motion for a new trial is as follows, to-wit:

(Title of Court and Cause.)

Notice of Motion for New Trial.

To the above entitled Court and to Hon. J. B. Hoffman, Justice of said Court, and to E. E. Leighton, Esq., Special Prosecutor, and to E. R. Simon, Esq., Assistant District Attorney:

You and each you will please take notice that the above named defendants and each of them will on the 17th day of May, 1915, move the above entitled Court, Hon. J. B. Hoffman, Justice of said Court, presiding, for a new trial in the above entitled action.

Said motion will be made upon all the orders, records, proceedings and files in the above entitled action, and upon this notice, and will be based upon the following grounds, to-wit:

1. That said jurors have been guilty of misconduct tending to prevent a fair and due consideration of the case;

2. That the verdict has been decided by means other than a fair expression of opinion on the part of the jurors;

3. Errors in the decision of the Court given on questions of law arising during the course of the trial;

4. That the verdict was contrary to law;

5. That the verdict is contrary to the evidence;

6. Newly discovered evidence material to the defendants and to each of them which they or either of them could not, with reasonable diligence, have discovered and produced at the trial.

Specifications on Ground No. 1.

a. That said jurors conversed with said J. B. Hoffman, as said Justice, during the deliberation of said jurors and not in the presence of said defendants or either of them, or in the presence of the attorneys or either of them of said defendants, upon said conversations are set forth and more particularly described in that certain affidavit of T. B. Shoemaker, one of the jurors sworn to try said action, which said affidavit is hereto attached and made a part hereof.

b. That said jurors used during their deliberations a copy of law upon which said defendants were charged and were tried, which said copy of said law set forth the penalty which should be imposed

upon a conviction and that said use of said copy of said law as set forth and more particularly described in that certain affidavit of F. E. Sharburne, one of the jurors sworn to try said action, which said affidavit is hereto attached and made a part hereof.

c. That said verdict was returned herein being decided by means other that a fair expression of opinion on the part of all the jurors by conversations herein above referred to, and by said use of the copy of said law herein above referred to, and by an agreement between said jurors and said Justice as to the verdict to be rendered by said jurors, together with a recommendation of said jurors, which said recommendation would be followed by said Justice, all of which is set forth in that certain affidavit of F. E. Sharburne, one of the jurors sworn to try said action, which said affidavit is hereto attached and made a part hereof.

Specifications of Ground No. 1

a. Same as set forth in Specification *a* of Ground No. 2;
b. Same as set forth in Specification *b* of Ground No. 2;
c. Same as set forth in Specification *c* of Ground No. 2;

Specifications of Ground No. 2.

a. That the Court erred and misdirected the jurors in refusing to give certain instructions requested by said defendants, which said instructions are numbered as follows:

VII, VIII, IX, X, XI, XII and XIII, and which above numbered and refused instructions are on file with said Justice and are a part of the records of the above entitled action and which said instructions are as follows, to-wit:

"VII.

"You are instructed that you must give just as much weight to the laws and regulations of the United States as to the laws of the State of California, and that where the State law conflicts with the laws and regulations of the United States upon the same subject, the laws and regulations of the United States control."

"VIII.

"You are instructed that if you find from the evidence that the defendants had control of the opium, but, the evidence leaves it that the opium was unlawfully, or being transported from the United States to Mexico through a chain of common carriers, then the defendants did not have the possession of the opium in violation of the laws of the State of California, and you must find [illegible]
them."

"IX.

"You are instructed that if you find from the evidence that the opium was in transit, being transported from the United States to Mexico through a chain of common carriers, then it is not necessary for the defendants to prove that they are either of them registered physician, dentist, pharmacists or veterinary surgeon practicing in this State, or that the opium was procured upon the order of a registered physician, dentist, pharmacist or veterinary surgeon."

"X.

"You are instructed that if you find from the evidence that the opium was in transit or being transported from the United States to Mexico through a system of common carriers, then it is the law of this case that any transportation of passengers or merchandise through a state or from one state to another or from the United States to a foreign country is within the exclusive jurisdiction of and legislation by — commerce."

"XI.

"You are instructed that if you find from the evidence that this opium was being transported from the United States to Mexico, then it is the law of this case that the power of Congress to control commerce between the several States and between the United States and a foreign country cannot be restricted by the laws or authorities of the states."

"XII.

"You are instructed that the charge brought against the defendants in this case is under a section of the laws of this State, and is exercised in the police power of the State, and that it is the law of this case, so far as the police power of the State of California is concerned, that the commerce between the States or between the United States and a foreign Country has been confined exclusively to Congress by the Constitution of the United States, and such commerce or transportation of merchandise is not within the jurisdiction of any state unless placed there by Congressional action."

"XIII.

"You are instructed that it is the law of this State that the jurisdiction of the commercial power of the United States and the police power and the distinctions between them must always be clear and distinct."

That the Court erred in denying defendants' motion for a dismissal of the said action, which said motion was made

and based upon the affidavit of Charles L. Brown, Esq., attorney for said defendants at said time; and upon the affidavit of E. E. Young, one of the defendants, herein, which said affidavits are of record herein and said motion and said affidavits are as follows, to-wit:

(Title of Court and Cause.)

Affidavit for Continuance.

STATE OF CALIFORNIA,
County of Imperial, ss:

C. L. Brown, being first duly sworn, says that he is the attorney for the defendants in the above entitled action, and so far as affiant knows, he is the only attorney representing the defendants in the said action. Affiant further says that it is necessary for him to be in the City of Los Angeles, California, on Saturday morning, the 15th day of May, 1915, and that he cannot be present in the City of Calexico on that day. Affiant further says that the business which requires him to be in the City of Los Angeles on said day is the matter of attending upon the taking of a deposition in the case of John T. Neal, et. al. versus J. Warren Smith, et. al., now pending from the Superior Court of the County of Imperial, State of California, and that affiant represents that defendant Smith in said action and in said Court. That it is necessary for affiant to attend the taking of said deposition in order that the interests of his said client may be conserved. Affiant further says that he has in good faith tried to have the matter of the taking of said deposition postponed so that he could be in the City of Calexico on the 15th day of May, 1915, and engage in the trial thereof but affiant says that he has not been able to have said matter continued. Affiant further says that if the trial of this cause should be commenced today that he does not believe that the same can be concluded, and that in the event that the Court should desire the case to go over to-morrow that it would work great injustice to the defendants and cause great inconvenience to the Court by reason of the necessary absence of the affiant on to-morrow the said 15th day of May.

Affiant therefore asks that this case be continued to a day not earlier than Monday, May 17th, 1915 at which time the affiant can attend the trial thereof.

C. L. BROWN.

Subscribed and sworn to before me, this 14th, day of May, 1915.

J. B. HOFFMAN,
Justice of the Peace of said Township.

(Endorsed:) Filed May 14th, 1915. J. B. Hoffman, J. P.

(Title of Court and Cause.)

Affidavit for Continuance.

STATE OF CALIFORNIA,
County of Imperial, ss:

E. E. Young, being first duly sworn, says that he is one of the defendants in the above entitled action, and that C. L. Brown is the only attorney representing said defendants in said case. Affiant further says that unless the said C. L. Brown can be present at the trial of said Cause, if the same be tried before Monday the 17th, day of May, 1915 said defendants cannot safely proceed to the trial thereof before the 17th day of May, 1915, as defendants will have no opportunity to secure other Counsel before said date.

E. E. YOUNG.

Subscribed and sworn to before me, this 14th day of May, 1915.

J. B. HOFFMAN,
Justice of the Peace of said Township.

(Endorsed:) Filed May 14, 1915. J. B. Hoffman, J. P.

20 Specifications of Ground No. 4.

a. That the verdict is contrary to law for the reasons set forth in all the specifications of Grounds Nos. 1, 2 and 3, as above set forth and more particularly referred to and made a part hereof as if incorporated herein.

Specifications of Ground No. 5.

a. That the verdict showed that the defendants or either of them did not wilfully and unlawfully have possession of the opium charged in the complaint herein on the 16th day of April, 1915, or at any other time or at all;

b. That the evidence showed that the opium mentioned in said complaint here was in transit from St. Louis, Mr., United States of America, to Mexicali, Republic of Mexico;

c. That the evidence showed that said opium was in transit from St. Louis, Mo., to Mexicali, Mexico, by means of common carriers and was in transit in interstate commerce.

Specifications of Ground No. 6.

The newly discovered evidence material to the defendants and to each of them is as follows, to-wit: that certain affidavit of C. F. McGinis and E. E. Young hereto attached and made a part hereof and more particularly referred to as if incorporated herein.

Dated: May 17th, 1915.

WILLIAM SEA, Jr.
LESLIE REED,
Attorney for said Defendants.

(Title of Court and Cause.)

27 STATE OF CALIFORNIA,
County of Imperial, ss:

F. L. Sherburne, being duly sworn, deposes and says: that on the 15th and 16th days of May, 1915, he was one of the jurors called and sworn to try the above entitled cause and as such juror was one of the jurors that rendered a verdict of guilty in the above entitled action; that on the evening of May 15th, 1915, at about the hour of eleven thirty p. m., and during the deliberations of the jury in the above entitled cause, R. L. Palmer, one of the jurors called and sworn to try the above entitled action, called upon the telephone connected with the room where said deliberations of said jury were taking place and the home of J. B. Hoffman, Justice of the Peace of said Township, and the Justice before whom the said cause was tried, and inquired of said J. B. Hoffman as said Justice whether or not the jurors might not be excused from the Court; that on the 16th day of May, 1915, at or about the hour of one-thirty a. m., and prior to the rendering of said verdict, said R. L. Palmer again called said J. B. Hoffman upon said telephone and held communication over said telephone with said J. B. Hoffman during the deliberation of said jury and inquired of said J. B. Hoffman as to the penalty imposed by the law under which said defendants were charged and being tried and said Palmer at said time inquired of said J. B. Hoffman where a certain book was located and immediately thereafter said Palmer located said book, which said book was a small grayback pamphlet containing the law under which the defendants were charged and were tried; that immediately thereafter said Palmer read from said book, among other things, the penalty imposed by said law for a violation thereof; that thereafter said jurors discussed said penalty as so read by said Palmer and said jurors agreed among themselves upon the sentence to be imposed in case of conviction, and thereupon said Palmer at or about the hour of two a. m. of the 16th day of May, 1915, again called said J. B. Hoffman upon said telephone and inquired of said J. B. Hoffman whether or not if the said jurors brought in a verdict of guilty and recommended a fine of One Hundred Dollars to be imposed upon each defendant without a jail sentence, such recommendation of said jurors upon the condition that

28 verdict of guilty would be followed by said J. B. Hoffman upon imposing sentence upon said defendants; that thereafter said Palmer informed said jurors that said J. B. Hoffman informed him that such recommendation said jurors might make upon returning a verdict of guilty in said case would be followed by the said J. B. Hoffman; that thereupon said jurors discussed said conversation between said Palmer and said J. B. Hoffman, and thereafter agreed among themselves to bring in a verdict of guilty as charged against defendants, with the recommendation that said defendants be fined in the sum of One Hundred Dollars each without a jail sentence, and thereupon said jurors so voted and the verdict was

by said jurors and received by said J. B. Hoffman in said above entitled action was made and based upon said agreement between said jurors and based upon said last named conversation between said Palmer and said J. B. Hoffman.

F. L. SHERBURNE.

Subscribed and sworn to before me, A. M. Shenk, at Calexico, Calif., this 17th day of May, 1915

[SEAL.] A. M. SHENK.
Notary Public in and for the County of Imperial, State of California.

My Commission expires September 14th, 1915.

(Title of Court and Cause.)

STATE OF CALIFORNIA,
County of Imperial, ss:

C. F. McGinis and E. E. Young, being first duly sworn, each for himself and not one for the other, deposes and says: that he is one of the defendants in the above entitled action; that he desires to produce on the trial of the above entitled action certain letters and communications now in the office of Mr. McCumber, Chief Deputy Inspector of United States Customs, showing that he had permission from the Treasury Department of the United States to export the opium mentioned in the complaint in file herein; that the production of said letters and communications cannot be procured without his first obtaining permission from said Treasury Department or its duly authorized officers; that he desires to produce on the trial of the above entitled action certain letters and communications now in the office of the Western Wholesale Drug Co. of Los Angeles, California, which said letters and communications show that permission was granted by the Treasury Department of the United States to him through said Western Wholesale Drug Co. to export said opium.

C. F. McGINIS.
E. E. YOUNG.

Subscribed and sworn to before me this 17th day of May, 1915.
J. B. HOFFMAN,
Justice of the Peace of the Township of Calexico, County of Imperial, State of California.

(Endorsed:) Filed May 17th, 1915. J. B. Hoffman, J. P.

That thereafter and on said 17th day of May, 1915, after arguments of said motion for a new trial by the attorneys for the respective parties, said Court denied said motion.

That the order denying said motion is as follows:

"said motion for a new trial was then overruled, after due argument on the same."

That thereupon said Court passed judgment upon said defendants, which said judgment is in the words and figures following, to-wit: "And it was ordered and adjudged that said C. F. McGinis and the said E. E. Young, defendants, each pay a fine of Three Hundred Dollars and that each of said defendants be imprisoned in the County jail in and for the said County of Imperial, State of California, for the term of sixty days and that each of said jail sentences be suspended during good behavior of said defendant receiving such sentence and upon the payment of the fine to be paid by each defendant, and until the fine be paid by the defendant to which such fine is assessed that he be imprisoned in said County jail for a term at the rate of one day for each of one dollar of fine, not exceeding in all One hundred eighty days for each defendant."

Thereupon notice of appeal was made and filed as follows:

(Title of Court and Cause.)

#196.

Notice of Appeal from Order Denying Motion for New Trial and from Judgment.

To the above entitled Court and to Hon. J. B. Hoffman, Justice of said Court, and to E. E. Leighton, Esq., Special prosecutor, and to E. R. Simon, Esq., Assistant District Attorney:

You and each of you will please take notice that the defendants above named and each of them hereby appeal to the Superior Court of the County of Imperial, State of California, from that certain order made and entered by the above entitled Court on the 17th day of May, 1915, denying defendants' motion for a new trial in the above entitled action.

And you will further take notice that the defendants above named and each of them hereby appeal to the Superior Court of the County of Imperial, State of California, from that certain judgment rendered, made and entered, on the 17th day of May, 1915, by the above entitled Court, which said judgment imposed a fine of Three Hundred ($300.00) Dollars upon each defendant and which said judgment sentenced each of said defendants to sixty (60) days in the County jail of said County and which said judgment further provided that said sentence of sixty (60) days be suspended during the good behavior of said defendants and the payment of said fine. And from the whole judgment on questions of law and fact.

Dated, May 17th, 1915.

WILLIAM SEA, Jr.,
LESLIE REED,
Attorneys for said Defendants.

Received a copy of the within this 17th day of May, 1915.

E. R. SIMON,
Asst. Dist. Atty.
E. E. LEIGHTON,
Special Prosecutor.

Filed May 17th, 1915. J. B. Hoffman, J. P.

That said defendants and each of them on this appeal from said order and on this appeal from said judgment rely upon and hereby specify the grounds upon which they and each of them rely as follows, to-wit:

1. That said jurors have been guilty of misconduct tending to prevent a fair and due consideration of the case;

2. That the verdict has been decided by means other than a fair expression of opinion on the part of the jurors;

3. Errors in the decision of the Court given on questions of law arising during the course of the trial;

4. That the verdict was contrary to law;

5. That the verdict is contrary to the evidence;

6. Newly discovered evidence material to the defendants and to each of them which they or either of them could not, with reasonable diligence, have discovered and produced at the trial.

And said defendants and each of them on said appeals hereby rely upon the Specifications of Ground No. 1 as hereinbefore set out and commencing on line 30 of page 19 and to and including line 23 of page 20 of this transcript, as if specially set out and incorporated herein and to which reference is hereby made as to the contents thereof;

And said defendants and each of them on said appeals hereby rely upon the Specifications of Ground No. 1 as hereinbefore set out and commencing on line 30 of page 19 and to and including line 23 of page 20 of this transcript, as if specially set out and incorporated herein and to which reference is hereby made as to the contents thereof;

And said defendants and each of them on said appeals hereby rely upon the Specifications of Ground No. 3 as hereinbefore set out and commencing on line 28 of page 20 and to and including line 30 of page 24 of this transcript, as if specially set out and incorporated herein and to which reference is hereby made as to the contents thereof;

And said defendants and each of them on said appeals hereby rely upon the Specifications of Ground No. 4 as hereinbefore set out and commencing on line 32 of page 24 and to and including line 4 on page 25 and commencing on line 30 of page 19 and to and including line 30 of page 24 of this transcript, as if specially set out and incorporated herein and to which reference is hereby made as to the contents thereof;

And said defendants and each of them on said appeals hereby rely upon the Specifications of Ground No. 5 as hereinbefore set out and commencing on line 5 of page 25 to and including line 15 of page 25 of this transcript, as if specially set out and incorporated herein and to which reference is hereby made as to the contents thereof;

And said defendants and each of them on said appeals hereby rely upon the Specifications of Ground No. 6 as hereinbefore set out and commencing on line 16 of page 25 and to and including line 20 of page 25 of this transcript, as if specially set out and incorporated herein and to which reference is hereby made as to the contents thereof.

[illegible]

Whereupon, said defendants and each of them having duly excepted to said transcript on appeal may be settled, allowed and certified as correct by law, and that upon the final hearing as provided by law, that complaint against said defendants and each of them may be retained as a new trial granted in said matter.

WILLIAM GEA, Jr.,
LESLIE REES,
Attorneys for said Defendants.

Received a copy of the within this 27th day of May, 1915.
R. E. [illegible]
Asst. Dist. Atty.
R. E. LEIGHTON,
Special Prosecutor.

The above and foregoing transcript on appeal is hereby settled and allowed, and I hereby certify to the correctness of the same.
Dated: This 27 day of May, 1915.

J. B. HOFFMAN,
Justice of the Peace of the Township of Calexico,
County of Imperial, State of California.

(Endorsed:) Filed May 28, 1915. M. H. Cook, County Clerk, by V. M. Thompson, Deputy.

[illegible] Minute Entry, June 1, 1915.

In the Superior Court of the State of California in and for the County of Imperial.

Friday, June 1, 1915.

Court convened at 10:00 o'clock A. M.

Present:

Judge Hon. Frederick J. Dick
Clerk Chas. E. Lockett, Jr.
Sheriff T. Wright.

No. 453.

[illegible]

In the Superior Court of the State of California in and for the County of Imperial.

No. 413.

C. F. McGinnis and E. E. Young, Plaintiffs in Error,

vs.

The People of the State of California, Defendant in Error.

Petition for Writ of Error.

To the Honorable the Superior Court of the State of California in and for the County of Imperial and to the Honorable Franklin J. Cole, Presiding Judge thereof:

C. F. McGinnis and E. E. Young, the Plaintiffs in Error in the above entitled cause, show by this their Petition to this Honorable Court that in the records, proceedings and decisions in the above entitled action in the above entitled Court manifest errors have occurred greatly to the damage of said C. F. McGinnis and said E. E. Young.

That it appears in the records and proceedings in said action that was drawn in question a federal question, to-wit: whether or not the said Plaintiffs in Error were engaged in interstate and foreign commerce on the 16th day of April, 1915, when the cocaine, opium and morphine mentioned in said action was seized and said Plaintiffs in Error were arrested, and whether or not said cocaine, opium and morphine so seized was on said 16th day of April, 1915, as mentioned in said action a shipment in interstate and foreign commerce from the United States to the Republic of Mexico, all of which more fully appears in the records and proceedings of the above entitled action, and is specifically set forth in the assignment of errors filed herewith.

Wherefore, said Petitioners pray that a Writ of Error be allowed to this Court so as to take said case to the Supreme Court of the United States, and that a transcript of the record, proceedings and papers upon which said judgment was rendered duly authenticated be ordered sent to the Supreme Court of the United States at Washington, D. C., under the rule of such court in such cases made and provided, and that the same may be held and the Supreme Court of the United States inquested and corrected in accordance with law and justice.

WILLIAM SEA, Jr.,
Attorney for Plaintiffs in Error.

Received copy of within Petition this Dec. 31, 1915.

GALEN SIGMON,
District Attorney.

E. M. SIMON,
Dep. Dist. Atty.

E. E. LEIGHTON,
Of Counsel.

(Endorsed:) Filed, Dec. 31, 1915. M. S. Cook, County Clerk, by V. N. Thompson, Deputy.

In the Superior Court of the State of California in and for the County of Imperial.

No. 413.

C. F. McGinnis and E. E. Young, Plaintiffs in Error,

vs.

The People of the State of California, Defendant in Error.

Order of Allowance of Writ of Error.

On this 31st day of December, 1915, the Petition of C. F. McGinnis and E. E. Young, the above named Plaintiffs in Error, for a Writ of Error to the Supreme Court of the United States came on to be heard, the said Plaintiffs in Error being represented by William Sea, Jr., their attorney, and it appearing to the Court that said Petition should be allowed and that a transcript of the record, proceedings and papers upon which the said judgment was rendered, properly certified, should be sent to the Supreme Court of the United States as prayed, in order that such proceedings may be had as may be just to correct any manifest errors as is alleged.

Now, therefore, it is hereby Ordered that a Writ of Error be and the same is hereby allowed and that the said Writ of Error issue out of and under the seal of the above entitled Court by the Clerk thereof, upon separate bond being furnished by said E. E. Young, and C. F. McGinnis, conditioned according to law in the sum of Five Hundred ($500.00) Dollars; that a true copy of the record proceedings and papers upon which the said judgment in this cause was rendered, together with the assignment of errors, writ of error and citation, duly certified according to law, shall be transmitted to the Supreme Court of the United States in order that said Court may inspect the same and take such action thereon as it deems proper according to law.

Dated—December 31, 1915.

FRANKLIN J. COLE,
Presiding Judge of the Superior Court of Imperial County, State of California.

Received copy of within order this Dec. 31, 1915.

GALEN NICHOLS,
District Attorney.
E. R. SIMON,
Dep. Dist. Atty.
R. R. LEIGHTON,
Of Counsel.

(Endorsed:) Filed Dec. 31, 1915. M. S. Cook, County Clerk, by V. N. Thompson.

Allowed by

FRANKLIN J. ODLE,
Presiding Judge of the Superior Court
of the State of California in and for
the County of Imperial.

44½ [Endorsed:] #413. Superior Ct. Supreme Court of the United States, October Term, 191-. C. F. McGinis and E. E. Young, Plaintiffs in error, vs. The People of the State of California, Defendant in error. Writ of Error. Received a copy of the within this 11th day of March, 1916. Galen Nichols, Dis. Atty. Filed Mar. 11, 1916. M. S. Cook, County Clerk, by V. R. Thompson, Deputy.

45 In the Superior Court of the State of California in and for the County of Imperial.

No. 413.

C. F. McGinis and E. E. Young, Plaintiffs in Error,

vs.

The People of the State of California, Defendant in Error.

Citation on Writ of Error.

United States of America,
State of California, ss:

To The People of the State of California and R. E. Leighton, Esq., and Galen Nichols, Esq., District Attorney of Imperial County, State of California, and Ernest R. Simon, Esq., Deputy District Attorney, Attorneys for Defendant in Error, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States to be holden in the City of Washington, in the District of Columbia, within sixty days from the date hereof, pursuant to an order of the above entitled Court allowing said Writ of Error from that certain judgment therein made and entered on the 16th day of July, 1915, in said action Numbered 413 in the above entitled Court, wherein The People of the State of California is Plaintiff and C. F. McGinis and E. E. Young are Defendants, to show cause, if any there be, why the judgment rendered in said cause against said C. F. McGinis and E. E. Young as in said order allowing said Writ of Error mentioned, should not be called and why justice should not be done in the premises in that behalf.

Witness, the Honorable Franklin J. Cole, Presiding Judge of the Superior Court of the State of California, in and for the County of Imperial, this 11th day of March, 1916.

FRANKLIN J. COLE,
Presiding Judge of the Superior Court of the State of California in and for the County of Imperial.

46½ [Endorsed:] No. 413. In the Superior Court of the State of California in and for the County of Imperial. C. F. McGinn and E. E. Young, Plaintiffs in Error, vs. The People of the State of California, Defendant in error. Citation on Writ of Error. William Sen, Jr., Attorney for Plaintiffs in Error, Calexico, Cal. Received a copy of the within this 11th day of March, 1916. Galen Nichols, Dis. Atty. Filed Mar. 11, 1916. M. S. Cook, County Clerk, by V. N. Thompson, Deputy.

47 In the Superior Court of the State of California in and for the County of Imperial.

No. 413.

C. F. McGinn and E. E. Young, Plaintiffs in Error,
vs.
The People of the State of California, Defendant in Error.

Assignment of Errors.

Now comes C. F. McGinn and E. E. Young, the above named Plaintiffs in Error, and file the following assignment of errors upon which they and each of them will rely on the prosecution of the Writ of Error in the above entitled action from the judgment made and entered by the above entitled Court on the 10th day of July, 1915.

1. That the Superior Court of the State of California, in and for the County of Imperial, erred in rendering and entering said judgment of the 10th day of July, 1915, in said cause.

2. That said Superior Court erred in not reversing said judgment.

3. That said Superior Court erred in not dismissing said cause.

4. That said Superior Court erred in dismissing said appeal.

5. That said Superior Court erred in dismissing the appeal from the order denying the Defendants' Motion for New Trial.

6. That said Superior Court erred in vacating and setting aside said judgment of the Justice's Court and not vacating and setting aside the whole of said judgment.

7. That said Superior Court erred in affirming said judgment as modified.

8. That said Superior Court erred in remanding said cause to the Justice's Court of Calexico Township.

9. That said Superior Court erred in not reversing said

judgment and dismissing said cause when all the evidence showed that said C. F. McGinis and E. E. Young were engaged in interstate and foreign commerce between the United States and the Republic of Mexico at the time said opium, cocaine and morphine were seized.

10. That said Superior Court erred in not reversing said Judgment and dismissing said cause when all the evidence showed that said opium, cocaine and morphine seized was a shipment in transitu in interstate and foreign commerce between the United States and the Republic of Mexico.

11. That said Superior Court erred in not reversing said Judgment and dismissing said cause when all the evidence showed that said opium, cocaine and morphine seized was not in the possession of said C. F. McGinis and E. E. Young in violation of Section 8 of the Act of the Legislature of the State of California, Known as the "Poison Law."

12. That said Superior Court erred in not reversing said Judgment and dismissing said cause when all the evidence showed that said opium, cocaine and morphine seized was in transitu in interstate and foreign commerce between the United States and the Republic of Mexico via Common carriers.

13. That said Superior Court erred in not reversing said judgment and dismissing said cause when the evidence showed that said opium, cocaine and morphine at the time of seizure was in the hands of a custom house broker, duly licensed by the United States and by the Republic of Mexico, as the connecting carrier for said shipment in interstate and foreign commerce from the United States to the Republic of Mexico.

14. That said Superior Court erred in deciding adverse to the claims, contentions and allegations of said C. F. McGinis and E. E. Young that said opium, cocaine and morphine so seized was a shipment in transitu in interstate and foreign commerce on the 16th day of April, 1915.

15. That said Superior Court erred in deciding adverse to the claims, contentions and allegations of said C. F. McGinis and E. E. Young that on said 16th day of April, 1915, they were engaged in interstate and foreign commerce between the United States and the Republic of Mexico, and did not have said opium, cocaine and morphine wilfully and unlawfully in their possession in violation of Section 8 of said Act of the said Legislature.

16. That said Superior Court erred in holding and deciding that said C. F. McGinis and E. E. Young were not deprived of any right, immunity or privilege under the Constitution and laws of the United States by said seizure of said opium, cocaine and morphine.

17. That said Superior Court erred in holding and deciding that said C. F. McGinis and E. E. Young were not deprived of any right, immunity or privilege under the Constitution and laws of the United States by their arrest for a violation of said section of said Act of the said Legislature.

18. That said Superior Court erred in not holding and deciding that said seizure of said opium, cocaine and morphine was unlawful and in violation of the right, immunity and privelege of said C. F.

McGinis and E. E. Young under the Constitution and laws of the United States as a shipment in transit in interstate and foreign commerce between the United States and the Republic of Mexico.

18. That said Superior Court erred in not holding and declaring that the arrest of said C. F. McGinis and E. E. Young was unlawful and in violation of the right, immunity and privilege of said C. F. McGinis and E. E. Young under the Constitution and laws of the United States as the consignees in the Republic of Mexico of said shipment of said opium, cocaine and morphine from the United States to the Republic of Mexico.

19. That said Superior Court erred in not holding that the verdict of the jury rendered in said cause was contrary to law.

20. That said Superior Court erred in not holding that said Justice's Court erred in refusing to give certain instructions to the jury requested by the Defendants and numbered VII, VIII, IX, X, XI, XII and XIII as more fully set out on pages 21 and 22 of the Transcript of the Case on Appeal.

21. That said Superior Court erred in not holding that said verdict in said cause was contrary to the evidence.

22. That said Superior Court erred in not holding that said verdict was arrived at by means other than a fair expression of opinion on the part of all the jurors.

23. That said Superior Court erred in not holding that the jurors were guilty of misconduct tending to prevent a fair and due consideration of the case.

Wherefore, said Plaintiffs in Error pray that said Judgment of said Superior Court be reversed and that said Superior Court be ordered to enter a judgment reversing the judgment of said Justice's Court and dismissing said cause.

WILLIAM SEA, Jr.
Attorney for Plaintiffs in Error.

[Endorsed:] No. 413. In the Superior Court of the State of California, in and for the County of Imperial. C. F. McGinis and E. E. Young, Plaintiffs in Error, vs. The People of the State of California, Defendant in Error. Assignment of Errors. William Sea, Jr., Attorney for Plaintiffs in Error, Calexico, Cal. Received copy of within assignment this Dec. 21, 1915. Ross Nesbitt, District Attorney. E. R. Sisler, Dep. Dist. Atty. E. E. Leighton, of Counsel. Filed Dec. 21, 1915. M. B. Ogle, County Clerk. by V. M. Thompson, Deputy.

51 In the Superior Court of the State of California in and for the County of Imperial.

No. 413.

C. F. McGinnis and E. E. Young, Plaintiffs in Error,

vs.

The People of the State of California, Defendant in Error.

Amendments to Assignment of Errors.

Now come the above named Plaintiffs in Error and file the following amendments to the Assignment of Errors heretofore filed, as follows:

1. Amendment to Assignment of Error Numbered 21 by setting out said instructions refused by the said Justice's Court, to-wit:

1. That said Superior Court erred in not holding that said Justice's Court erred in not giving the following instruction requested by the defendants and numbered VII, as follows:

You are instructed that you must give just as much weight to the laws and regulations of the United States as to the laws of the State of California, and that where the State law conflicts with the laws and regulations of the United States upon the same subject, the laws and regulations of the United States control.

2. That said Superior Court erred in not holding that said Justice's Court erred in not giving the following instruction requested by the defendant and numbered VIII, as follows:

You are instructed that if you find from the evidence that the defendants had control of the opium, but, the evidence shows that the opium was in transit, or being transported from the United States to Mexico through a chain of common carriers, then the defendants did not have the possession of the opium in violation of the laws of the State of California, and it is your duty to acquit them.

3. That said Superior Court erred in not holding that said Justice's Court erred in not giving the following instruction requested by the defendants and numbered IX, as follows:

You are instructed that if you find from the evidence that said opium was in transit, being transported from the United States to Mexico through a chain of common carriers, then it is not necessary for the defendants to prove that they are either of them a physician, dentist, pharmacist or veterinary surgeon practicing in this State, or that the opium was procured upon the order of a physician, dentist, pharmacist or veterinary surgeon.

4. That said Superior Court erred in not holding that said Justice's Court erred in not giving the following instruction requested by the defendants and numbered X, as follows:

You are instructed that if you find from the evidence that the

opium was in transit or being transported from the United States to Mexico through a system of common carriers, then it is the law of this case that any transportation of passengers or merchandise through a state or from one state to another or from the United States to a foreign country is within the exclusive jurisdiction of and legislation by Congress.

5. That said Superior Court erred in not holding that said Justice's Court erred in not giving the following instruction requested by the defendants and numbered XI, as follows:

You are instructed that if you find from the evidence that this opium was being transported from the United States to Mexico, then it is the law of this case that the power of Congress to control commerce between the several states and between the United States and a foreign country cannot be restricted by the laws or authorities of any state.

6. That said Superior Court erred in not holding that said Justice's Court erred in not giving the following instruction requested by the defendants and numbered XII, as follows:

You are instructed that the charge brought against the defendants in this case is under a section of the laws of this State, and is exercised as the police power of the State, and that it is the law of this case, as far as the police power of the State of California is concerned, that the commerce between the States or between the United States and a foreign country has been confined exclusively to Congress by the Constitution of the United States, and such commerce or transportation of merchandise is not within the jurisdiction of any state unless placed there by Congressional action.

7. That said Superior Court erred in not holding that said Justice's Court erred in not giving the following instruction requested by the defendants and numbered XIII, as follows:

You are instructed that it is the law of this State that the independence of the commercial power of the United States and the police power of the state and the delimitations between them must always be recognized and observed.

WILLIAM SEA, Jr.,
Attorney for Plaintiffs in Error.

[Endorsed:] #413. In the Superior Court of the State of 52½ California in and for the County of Imperial. C. F. McGinis and E. E. Young, Plaintiffs in Error, vs. The People of the State of California, Defendant in Error. Amendments to Assignment of Errors. Received copy of within this Feb. 7, 1916, Galen Nichols, District Attorney. Filed Feb. 7, 1916. M. S. Cook, County Clerk, by V. N. Thompson, Deputy. William Sea, Jr., Attorney for Plaintiffs in Error.

In the Superior Court of the State of California in and for the County of Imperial.

C. F. McGINNIS and E. E. YOUNG, Plaintiffs in Error,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA, Defendant in Error.

Certificate of Clerk.

STATE OF CALIFORNIA,
County of Imperial, ss:

I, M. S. Cook, County Clerk and Ex-officio Clerk of the Superior Court of the County of Imperial, State of California, do hereby certify, that the foregoing transcript consisting of 52 pages, constitutes a full, true and correct copy of the proceedings had, papers filed, and orders entered in the above-entitled cause, as set forth therein, and as the same appear on file and of record in this office, with the exception of the Writ of Error, Citation, Assignment of Errors and Amendment to Assignment of Errors herewith attached at pages 43, 44, 45, 46, 47, 48, 49, 50, 51 and 52, respectively, which are the original Writ, Assignment, Citation and Amendment to Assignment.

Witness my hand and the seal of said Superior Court this 11th day of March, 1916.

[Seal Superior Court, Imperial County, California.]

M. S. COOK,
County Clerk.
By V. N. THOMPSON,
Deputy Clerk.

Endorsed on cover: File No. 25,208. California Superior Court, Imperial County. Term No. 133. C. F. McGinnis and E. E. Young, plaintiffs in error, vs. The People of the State of California. Filed March 31st, 1916. File No. 25,208.